

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Open Network Architecture Tariffs) CC Docket No. 92-91
of Bell Operating Companies)

TO: The Commission

PETITION FOR RECONSIDERATION

Pursuant to Section 1.106 of the Commission's Rules and Regulations, 47 C.F.R. § 1.106, MCI Telecommunications Corporation (MCI) hereby moves for reconsideration of the Commission's ONA Investigation Final Order in the above-captioned proceeding.¹ As explained below, that order constitutes an unprecedented foray into secret ratemaking, in which MCI and other intervenors were denied any meaningful participation, in violation of the Communications Act of 1934, the Administrative Procedure Act (APA) and constitutional due process requirements.

¹/ FCC 93-532 (released Dec. 15, 1993)

Introduction

MCI has discussed, in its Opposition to Direct Cases filed in this docket on October 16, 1992 and other pleadings, a few of the more clear-cut methodological problems in the Open Network Architecture (ONA) tariffs filed by the Bell Operating Companies (BOCs), including problems related to the computerized "SCIS" and "SCM" cost models used to calculate costs in setting those rates. MCI has also explained, at pages 27-35 of its Opposition, why both versions of the SCIS/SCM cost model that were ultimately disclosed to intervenors (referred to as "Redactions I and II") were totally useless, even as to the one switch type for which each intervenor was provided data. MCI has also discussed, in its Application for Review of the SCIS Disclosure Order² and other pleadings, the unjustifiable restrictions placed on intervenors' access to and use of those redacted cost models and other necessary materials, which further precluded meaningful participation in this investigation.

In its ONA Investigation Final Order, the Commission addresses issues raised by MCI and other intervenors in their Oppositions. Although the Commission's response to those issues is unreasonable and inadequate, MCI generally will not repeat in this forum the points raised in its Opposition. The focus of this Petition is not on the issues MCI did raise, but rather the

²/ Commission Requirements for Cost Support Material To Be Filed With Open Network Architecture Access Tariffs, 7 FCC Rcd. 1526 (Com. Car. Bur. 1992), aff'd, FCC 93-531 (released Dec. 15, 1993) (SCIS Disclosure Reconsideration Order).

issues it and the other intervenors were prevented from raising by the inadequate disclosure resulting from Redactions I and II, and the effect of such a handicap on the reasonableness and validity of the ONA Investigation Final Order. Redactions I and II were so useless that MCI and the other intervenors were completely precluded from any meaningful participation in the investigation in this docket. In the ONA Investigation Final Order and SCIS Disclosure Reconsideration Order, the Commission attempts to justify the inadequate disclosure provided to MCI and the other intervenors on grounds so at odds with the record and irrational, and so grossly mischaracterizes the extent of their participation in this investigation, that the public interest requires that MCI lend whatever additional assistance may be necessary to clear up the Commission's evident confusion.³

The Disclosure Afforded by Redactions I and II Was so Inadequate as to Preclude Meaningful Participation in This Investigation

According to the Commission, the SCIS Disclosure Order "required Bellcore and US West, in cooperation with switch vendors, to develop redacted SCIS and SCM models, which would allow intervenors to observe the models in operation, and determine their sensitivity to changes in various input data

³/ Given the nature of the Commission's muddled approach to the issues, it is inevitable that MCI will have to repeat points it has made previously or at least will have to raise matters that ought to have been obvious corollaries of its prior points. Because of the Commission's approach, some overlap between MCI's two petitions for reconsideration of these interrelated orders is also inevitable.

values...."⁴ In the ONA Investigation Final Order, the Commission appears to believe that is what actually happened. In paragraph 80, the Commission concludes that:

the redactions did not prevent interested parties from making a meaningful review of SCIS for purposes of evaluating the ONA tariffs. The intervenors were able to conduct sensitivity analyses, i.e., to examine how changes in SCIS inputs affect SCIS outputs, on most of the relevant SCIS inputs. These sensitivity analyses...enabled the intervenors to raise specific questions regarding the reasonableness of the cost and rate development.... We conclude that the restrictions placed by Bellcore and US West on the examination of Redaction II permitted intervenors an adequate opportunity for review.

The problem with all of the quoted statements is that they are entirely incorrect. MCI made it quite clear in its Opposition to Direct Cases that Redaction II, like Redaction I, was so inadequate that any sensitivity analyses were "impossible,"⁵ preventing meaningful participation in the tariff investigation.⁶ There were no credible statements in the record contradicting MCI's observations as to Redaction I or II. There was therefore no credible support for the Commission's

⁴/ ONA Investigation Final Order at ¶9.

⁵/ MCI Opposition at 32.

⁶/ Id. at 33. As MCI pointed out in its Opposition, at 28-29, the problem here is not the internal validity of the SCIS/SCM model, but rather the inherent flexibility afforded to the analyst in the selection of inputs, thus allowing the BOCs to justify almost any calculation of costs and thus any rates. The ONA Investigation Final Order at ¶¶82-83 alludes to this distinction but fails to address the main issue presented by MCI. Because intervenors were not able to perform sensitivity analyses, they were unable to identify the full range of flexibility in the selection of inputs, and thus were unable to identify the range of issues that must be examined to assure reasonable rates.

enthusiasm for Redaction II or the conclusions quoted above as to the intervenors' participation in the tariff investigation, particularly the claim that "intervenors were able to conduct sensitivity analyses...."

The Commission's conclusion suggests that it might have been thrown off by the intervenors' ability "to raise specific questions regarding the reasonableness of the cost and rate development."⁷ Contrary to the Commission's inference, the intervenors' "questions" were not the fruit of sensitivity analyses using Redaction I or II, since no such analyses were possible. Most of the questions raised were simply "well-documented suspicions regarding the potential for misuse of the costing process by the BOCs," as MCI put it.⁸ Redaction II, like Redaction I, prohibited any follow-up on those suspicions.⁹ Thus, the intervenors were unable to raise any issues based on the sensitivity analyses that the Commission concedes are the prerequisite to any meaningful review of the ONA tariffs.¹⁰

The Commission might also have assumed that each intervenor was able to review the SCIS/SCM cost model as to one switch type and that the Commission therefore had the benefit of all of the intervenors' analyses of all of the different switch types. The SCIS Disclosure Reconsideration Order, at paragraphs

⁷/ ONA Investigation Final Order at ¶80.

⁸/ MCI Opposition to Direct Cases at 33.

⁹/ Id.

¹⁰/ See SCIS Disclosure Reconsideration Order at ¶10.

11 and 12, focuses on MCI's criticism that intervenors were not allowed to "compare notes." Since the Commission wrongly concludes that "the intervenors were able to examine the effects of SCIS inputs on SCIS outputs for all the relevant SCIS inputs except negotiated price discounts,"¹¹ the Commission may have wrongly assumed that each intervenor had access to a useful cost model for one switch type and that all of the intervenors' analyses taken together therefore provided the Commission with a complete picture. Nothing could be further from the truth. Since no sensitivity analyses were possible, even for the one switch type that each intervenor was permitted to review, the totality of all of the intervenors' pleadings, taken together, could not have provided, and did not provide, the Commission with any insights that sensitivity analyses might have yielded.

Since MCI and the other intervenors were prevented from participating effectively in this proceeding on account of the inadequate disclosure authorized by the SCIS Disclosure Order and SCIS Disclosure Reconsideration Order, the ONA Investigation Final Order constitutes unprecedented secret ratemaking. Even if the Commission had adequately addressed, in the ONA Investigation Final Order, all of the issues raised by intervenors, which is not the case, the Commission has absolutely no basis for assuming that those were the only issues that needed to be addressed to assure reasonable rates. As explained above and in MCI's Opposition, the intervenors' inability to perform necessary

¹¹/ Id. at ¶14. See also, ONA Investigation Final Order at ¶80.

sensitivity analyses prevented them from raising issues that such analyses would have suggested. As the Commission concedes, such analyses are "a prime purpose of independent review."¹²

There is therefore no basis for the Commission's conclusion that the ONA ratemaking "methods employed by BOCs are generally sound apart from these specific deficiencies [ordered to be corrected]"¹³ and that once revised ONA tariffs are filed as required by the ONA Investigation Final Order, this investigation may be terminated.¹⁴ The secret and largely unreviewed ratemaking approved in the ONA Investigation Final Order therefore violates Sections 201-05 of the Communications Act of 1934, as well as the APA and constitutional due process requirements.¹⁵

¹²/ SCIS Disclosure Reconsideration Order at ¶10.

¹³/ ONA Investigation Final Order at ¶3.

¹⁴/ Id. at ¶95.

¹⁵/ See, e.g., American Television Relay, Inc., 63 F.C.C. 2d 911, 921 (1977) (FCC consideration of evidence that other parties have no opportunity to review violates "their right of due process").


Conclusion

Accordingly, the ONA Investigation Final Order should be reconsidered, in order that the investigation be conducted in a manner that permits meaningful participation by intervenors, thereby permitting a review of all of the issues necessary to assure reasonable ONA rates.

Respectfully submitted,

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APPENDIX G

RECEIPT

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Open Network Architecture Tariffs
of Bell Operating Companies

CC Docket No. 92-91

TO: The Commission

FEB - 8 1993

REPLY TO OPPOSITIONS

FEDERAL COMMUNICATIONS
OFFICE OF THE SECRETARY

MCI Telecommunications Corporation (MCI) hereby replies to the oppositions to its Petition for Reconsideration of the Commission's ONA Investigation Final Order in the above-captioned proceeding.¹

The principal issue raised by MCI in its Petition for Reconsideration of the ONA Investigation Final Order (Order) relates to the Commission's characterization of the extent to which MCI and other intervenors were permitted to participate in this important tariff investigation. As noted in MCI's Petition, the Commission in paragraph 80 of the Order concluded that:

the redactions did not prevent interested parties from making a meaningful review of SCIS for purposes of evaluating the ONA tariffs. The intervenors were able to conduct sensitivity analyses, i.e., to examine how changes in SCIS inputs affect SCIS outputs, on most of the relevant SCIS inputs. These sensitivity analyses...enabled the intervenors to raise specific questions regarding the reasonableness of the cost and rate development.... We conclude that the restrictions placed by Bellcore and US West on the examination of Redaction II permitted intervenors an adequate opportunity for review.

There is no record support for any of these determinations. To the extent the BOCs merely echo the Commission's "findings" and "conclusions" on these key issues, they contribute nothing whatsoever of value toward the resolution of the important issues raised in MCI's petition. The BOC oppositions serve only to prolong the Commission's evident confusion and thereby prevent it from focusing on the important issues raised by intervenors in this proceeding.

Intervenors' Ability To Conduct Sensitivity Analyses. MCI believed that it had made it quite clear in its Opposition to Direct Cases (specified by the

¹ FCC 93-532 (released Dec. 15, 1993).

Commission as the appropriate vehicle for raising such issues) that sensitivity analyses were "impossible"² with either of the redactions, thereby preventing meaningful participation in the tariff investigation. In its Petition, MCI noted that there were no credible statements in the record contradicting MCI's observations as to the deficiencies of the redacted models, and that there was, therefore, no credible support for the Commission's claim that "intervenors were able to conduct sensitivity analyses...."³

Of the four BOCs addressing this issue in Oppositions to MCI's Petition, only one accurately characterizes MCI's contention that "intervenors were unable to perform sensitivity analyses on data inputs and thus to enjoy meaningful participation in the tariff investigation." BellSouth Opposition at 2. The other three baldly assert — without citation to any evidence of record, thereby bearing silent witness to the merits of MCI's position on this issue — that intervenors were able to conduct sensitivity analyses.⁴

Intervenors' Specific Questions. Two of the BOCs echo the Commission's assertion, at para. 80 of the Order, that the intervenors' "sensitivity analyses, in addition to the information in the Andersen Report, enabled the intervenors to raise specific questions regarding the reasonableness of the cost and rate development." See SW Bell Opposition at 3 and Ameritech Opposition at 2.

For its part, Ameritech merely paraphrases the Commission's description

² MCI Opposition at 32.

³ MCI was not the only intervenor to assert that the redactions made it impossible for intervenors to conduct sensitivity analyses. See, e.g., Ad Hoc's Opposition to Direct Cases at 7:

As [Ad Hoc's expert] ETI points out, only Arthur Andersen was given access to the data necessary to perform these analyses; intervenors were not permitted to even see, much less analyze, such data.

See also, Sprint Comments (January 27, 1994) at 1; Oppositions to Direct Cases of AT&T (p. 6, n. 9); Metromedia at 10-11; Sprint at 4-7 and n. 8; WilTel at 19. With respect to this issue, there is total unanimity among the intervenors who reviewed Redaction II; neither Allnet nor GSA participated in that phase of the proceeding.

⁴ See Ameritech at 3, NYNEX at 3, SW Bell at 3.

of the "specific questions" raised by intervenors; its echo adds nothing of substance. SW Bell, at 3, asserts that MCI formulated its questions "after...its sensitivity analyses...." — an obvious absurdity, inasmuch as MCI's assertion that such analyses were "impossible" is uncontroverted by any record evidence whatsoever. Like the Commission, Ameritech and SW Bell have ignored the obvious: of all of the "specific questions regarding the reasonableness of the cost and rate development," none were based upon sensitivity analyses of SCIS and SCM, which were not conducted. Some of the "specific questions" were based upon on limited information in the redacted Andersen report. The remainder were, as MCI noted in its Petition, "well-documented suspicions" derived from intervenors' review of the limited materials available to them: the Designation Order⁵, the BOC Direct Cases, and the severely redacted models — in some cases augmented by the past experience of intervenors' experts with SCIS, SCM or similar models in state proceedings where far more information was available, with or without non-disclosure agreements.⁶ As MCI pointed out, there is no way of knowing whether sensitivity analyses would have turned up numerous other significant issues.

Andersen's Independent "Audit". Ameritech, at 3, asserts that "the Commission provided for an independent audit of the SCIS model by Arthur Andersen, which filed a report." Similarly, NYNEX, at 4, describes "an independent audit of the entire SCIS and SCM program by an outside accounting firm, under Commission supervision." Just as there were no "sensitivity analyses" conducted by intervenors, there was no "audit" — notwithstanding the

⁵ The "specific questions" enumerated by Ameritech at 2 as having been raised by intervenors inexplicably include three of the issues specifically designated by the Commission for investigation: "whether the information properly represented the mix of each BOCs' [sic] switches" [Designation Order, issue (2)], "whether the information should reflect the embedded or prospective cost of the switches" [Designation Order, issue (4)], "as well as the cost of money used in the formula." [Designation Order, issue (3)].

⁶ For example, MCI expert Don Wood was able to view more of SCIS than permitted under Redaction I or II without signing a confidentiality agreement in Florida Docket 900633-TL and in New York Case No. 28425. See also AT&T Opposition to Waiver Petitions, October 4, 1991 at 8, discussing numerous state proceedings where SCM and SCIS were made available to intervenors pursuant to protective orders.

Bureau's unambiguous directive that an independent audit be conducted. The "independent audit" was quickly scaled back to an "independent review" over the vigorous protests of MCI and other intervenors. Andersen's unwillingness to characterize its limited "review" as an "audit" speaks volumes with respect to the degree of rigor and thoroughness of its undertaking, and the eleventh-hour efforts of these BOCs to create an "audit" where none was ever undertaken speaks volumes with respect to the merits of their position.

The Independent Staff Review. Southwestern Bell, at 3 n. 11, cites the "Commission's ability to conduct its own analyses" as support for the proposition that "the Commission obviously found it unnecessary to have the "benefit" of all of the intervenors' analyses."⁷ Even if NYNEX's characterization of the Andersen review as covering "the entire SCIS and SCM program" were correct, the staff's "independent review" of the SCIS models submitted in camera could not have been equally comprehensive: the SCIS In Camera Order required each Bell Operating Company to submit SCIS or SCM for "one study area" only.⁸ The Commission's assertion, at para. 82 of the Order, that "the results of Andersen's analysis were consistent with our conclusions, based upon independent staff review" identifies four issue areas of review ostensibly undertaken by staff. MCI has reviewed the four sections of the Order cited by the Commission in the notes accompanying para. 82, and has been

⁷ The "obvious" Commission finding referenced by SW Bell shares two salient characteristics with many other "findings" in this proceeding: it is neither set forth in the Order nor supported by any record evidence.

⁸ There is no indication that the Commission staff (or, for that matter, Arthur Andersen) ever reviewed two "other" cost models used by BOCs to develop ONA BSEs. The first of these "other" models is the CCSCIS model used by Ameritech to develop direct costs for one BSE (SCIS In Camera Order at 2, n. 4). The second unreviewed model is the pre-1987 version of SCIS employed by US West. (Compare SCIS In Camera Order at 2, n. 4: "US West does not rely on SCIS for the development of BSE direct costs...." with Order at 22, n. 113:

US West also did not submit the pre-1987 SCIS version it used to develop the majority of its BSE rates in January 1992, as was required by the SCIS In Camera Order. In April 1992, US West explained which software was had been used to develop each of its 24 BSEs, and offered to submit the SCIS software it had used.

There is no evidence that the Bureau accepted US West's "offer"; if it did, it denied intervenors any opportunity to review US West's pre-1987 SCIS, even in redacted form.

unable to find any evidence whatsoever that an independent staff review, described as "examin[ing] proprietary materials from additional or different perspectives" was conducted.⁹ Although the Commission broadly asserted that "[t]he staff review process did not duplicate the Andersen effort," none of the conclusions of that independent review process are set forth in the Order. The Order does not identify any issues that were not "referred to Andersen" by the staff. Order at para. 22. In at least one instance, the Commission dramatically overstated Andersen's "findings," thereby leaving in doubt the accuracy of its assertion that Andersen's report and its "own review" — nowhere described — support the conclusion reached by the Commission.¹⁰

Applicability of the "FOIA Standard". Two of the BOCs rely heavily on the Commission's determination that SCIS should not be made available for public disclosure under the Freedom of Information Act (FOIA) in support of the Commission's decision to limit intervenor participation.¹¹ As the Commission recently recognized in the 800 Data Base Access Tariff Proceeding, the

⁹ Although each of the cited sections of the Order makes a passing reference to "our own review" (para. 17), "our internal review" (para. 21), "our analysis" (para. 31), or "staff review" (para. 38), all supporting data not based on public record evidence (BOC direct cases, intervenor oppositions and BOC replies) was apparently derived from the Andersen report. See, e.g., Order at notes 31, 34, 35, 45, 48, and 76.

¹⁰ In Section III.B.1., "Representative Model Offices," at para. 17, the Commission asserts that "Andersen verified that SCIS could not accommodate all the switching offices in BellSouth's region, and that the user-defined study produces results which are virtually identical to the result BellSouth would have obtained if it could include all its switching offices in the model office." [emphasis added]. These assertions dramatically overstate the conclusions set forth in the redacted Andersen report made available to intervenors. Andersen did not claim that it "verified" the capability of the SCIS software by contacting its developer, Bellcore, but merely that it "reviewed the explanation provided by BellSouth." Additionally, Andersen did not express a conclusion that the results of a user-defined study would produce results which are "virtually identical to the result [it] would have obtained" had SCIS been able to accommodate all switching offices. On the contrary, having already accepted BellSouth's explanation of the capacity limits of SCIS as a given, Andersen merely stated that it "believes that the user defined approach used by BellSouth produces results that are consistent with the results that would have been obtained by using the model office study approach followed by the other BOCs."

¹¹ Ameritech, at 2-3: "the SCIS model was properly found to be a trade secret and exempt from disclosure under the Freedom of Information Act." See also NYNEX, at 2.

"interest in maintaining the private, confidential status of commercial and financial information, including trade secrets" which underlies FOIA, must be balanced in cases such as this against another "fundamental" policy, namely that "access to relevant information is preferred because it enables interested persons to participate fully in a Section 204 investigation."¹² In the Order in this proceeding, the Commission acknowledged in passing (at para. 78) the need to balance these competing interests, but the balancing process is nowhere in evidence.¹³

The Disclosure "Compromise". BellSouth, at 4, asserts that the "parameters of intervenors' access to SCIS material were the product of a compromise painstakingly developed between competing interests." BellSouth ignores the fact that one of the two "fundamental" interests (see 800 Data Base Order, above) — represented by the ratepayer intervenors — was absent from the room when the "compromise" was negotiated. In a similar vein, US West (at 3, n. 8) asserts that "both the Commission and the filing carriers bent over backward to permit MCI to participate fully in the tariff proceeding." Any "bending over" which may have occurred must have taken place in closed door sessions to which only the Commission staff, Bellcore, the BOCs and the switch vendors were admitted. MCI witnessed none of it.¹⁴

The Limits of "Discretion". Some of the BOCs question the legal significance of the unprecedented procedures used in this proceeding, characterizing intervenor participation in tariff investigations as purely "discretionary" and claiming that the BOCs' submissions of undisclosed cost models

¹² Order, DA 94-99, CC Docket No. 93-129, released January 31, 1994, at 6.

¹³ The ultimate conclusion in para. 80 appears to have been strongly influenced, on the one hand, by the Commission's erroneous "conclusions" with respect to the degree of intervenor participation and, on the other, by the Commission's earlier decision on the FOIA issue (n. 173).

¹⁴ As noted in the Commission's companion SCIS Review Order at note 25, US West unilaterally modified the "one attorney, two-expert" provision of the Bureau-prescribed Model Non-Disclosure Agreement "to accommodate the original attorney's vacation plans." US West's "flexibility" and "willingness to bend over backward" did not extend to modification of the same provision at the request of MCI. See MCI Opposition (April 1, 1992) at 10, n. 15.

and other cost support data was "primarily to aid the Commission in exercising its.... discretionary decision" as to whether to suspend a tariff and initiate an investigation, rather than "to confer important procedural benefits upon individuals."¹⁵

The problem, of course, is that here the Commission already made that discretionary decision in initiating this investigation under Section 204(a) of the Communications Act, which provides for a "hearing" "upon reasonable notice." It is elementary that an agency's failure "to disclose the information upon which it relies" violates "quasi-adjudicatory" informal "notice" and "hearing" requirements. See U.S. Lines, Inc. v. FMC., 584 F.2d 519, 535, 539 (D.C. Cir. 1978). Like the informal "notice and hearing" requirement at issue in U.S. Lines, the public right to a "hearing" "upon reasonable notice" under Section 204 is effectively nullified when the agency decision is based... on... secret points... to which the public and the participating parties have no access." Id. at 539. "[T]he requirement of a hearing to determine the public interest means, at a very minimum, that an opportunity must be afforded for meaningful public participation."

Here the parties were unable to probe the secret cost models on which the rates ultimately approved by the Commission were based. As in U.S. Lines, "there was no such opportunity....for a real dialogue or exchange of views." Id. at 540. Such secret decisionmaking does "violence not only to" Section 204 "but to the basic fairness concept of due process as well." Id. at 541.¹⁶

Moreover, it is equally elementary that the Commission's secret decision-making and the concomitant failure to disclose essential material to affected parties are arbitrary and capricious.¹⁷ Not only is an agency's

¹⁵ Aeronautical Radio, Inc. v. FCC, 642 F.2d 1221, 1235 (D.C. Cir. 1980), cert. denied, 451 U.S. 920 (1981), quoting American Farm Lines v. Black Ball Freight Service, 397 U.S. 532, 538 (1970).

¹⁶ See also, Sea-Land Service, Inc. v. FMC, 653 F.2d 544, 551-52 (D.C. Cir. 1981).

¹⁷ See U.S. Lines, supra, 584 F.2d at 533-35, 541-43.

reliance on undisclosed data for its decision arbitrary and capricious, id. at 533, but "the critical role of adversarial comment in ensuring proper functioning of agency decisionmaking" also requires timely disclosure of essential data to affected parties to avoid arbitrariness, id. at 542, independent of the agency's reliance on undisclosed data in its decision. Id. at 534. See also, Home Box Office, Inc. v. FCC, 567 F.2d 9, 55 (D.C. Cir.), cert. denied, 434 U.S. 829 (1977) (citing need for "adversarial discussion among the parties").

Even the Commission, in the ONA Investigation Final Order, concedes that "data sufficient to support the agency's actions [must be]... available... for comment."¹⁸ In this proceeding, however, because of the redactions in the cost models, intervenors were unable to perform the sensitivity analyses that were absolutely necessary to probe those models and thus the rates generated thereby. As in American Lithotripsy Society v. Sullivan, 785 F. Supp. 1034 (D.D.C. 1992), the "public" was not provided "a chance to comment on the methodology the agency used to derive a rate from the data....[T]he agency...cannot function properly without having the benefit of such comments before it makes any final decisions."¹⁹

¹⁸ Id. at 18 n.16, citing B.F. Goodrich Co. v. Department of Transportation, 541 F.2d 1178, 1184 (6th Cir. 1976), cert. denied, 430 U.S. 930 (1977); In re Surface Mining Regulation Litigation, 627 F.2d 1346, 1354 n.9 (D.C. Cir. 1980).

¹⁹ Id. at 1036. See also, Portland Cement Ass'n v. Ruckelshaus, 486 F. 2d 375, 392 (D.C. Cir. 1973), cert. denied, 417 U.S. 921 (1974) (citing "refusal of the agency to respond to what seem to be legitimate problems with the [agency's] methodology" as "a critical defect in the decision-making process").

Conclusion

Accordingly, the ONA Investigation Final Order should be reconsidered and the investigation reopened and conducted in a manner that permits meaningful participation by intervenors, thereby permitting a review of all of the issues necessary to assure reasonable ONA rates.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By:

Larry A. Blosser

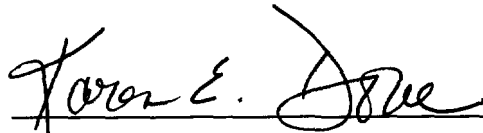
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Dated: February 8, 1994

CERTIFICATE OF SERVICE

I, Karen E. Dove, do hereby certify that true and correct copies of the foregoing "APPLICATION FOR REVIEW," without Appendicies, were served this 8th day of December, 1994, by first-class mail, postage prepaid, upon the attached parties.

A handwritten signature in cursive script, reading "Karen E. Dove", is written over a horizontal line.

Karen E. Dove

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